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PATENT
Customer No. 22,852
Attorney Docket No. 05823.0260

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Bum-Joon KIM et al.)
Application No.: 10/824,527) Group Art Unit: 1634
Filed: April 15, 2004) Examiner: Sitton, Jehanne Souaya
For: IDENTIFICATION METHOD OF)
GENUS STREPTOMYCES BY)
USING groEL2 GENE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In a restriction requirement dated February 23, 2006, the Examiner required restriction under 35 U.S.C. § 121 between:

Group I - Claims 1-4, drawn to nucleic acids, classified in class 536, subclass 23.1; and

Group II - Claims 5-9, drawn to methods of detecting streptomyces, classified in class 435, subclass 6.

Applicants provisionally elect to prosecute Group I, claims 1-4 drawn to nucleic acids with traverse.

In order to require restriction of claims, the Examiner must demonstrate that the subject matter of the claims is independent or distinct and that there would be a serious burden on the Examiner if restriction is not required. Manual of Patent Examining Procedure § 803. In this case, the Office has not explained why there would be a

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serious burden on the Examiner if the claims were not restricted. See Manual of Patent Examining Procedure § 808.2. Therefore, Applicants request the search of both Groups simultaneously.

Nevertheless, Applicants request rejoinder of Group II after the claims of Group I are allowed, as they recite a method of using the nucleic acids of Group I.

Turning to the restriction between SEQ ID NOS: 3-61, Applicants elect SEQ ID NO: 43 for examination and search. This election is also with traverse. Without addressing whether the claimed amino acid and nucleotide sequences are independent and distinct, Applicants note that the M.P.E.P. requires the examination of a reasonable number of sequences, and states that up to ten independent and distinct amino acid or nucleotide sequences should be examined without restriction. Manual of Patent Examining Procedure § 803.04. Accordingly, Applicants submit that this requirement for sequence election is improper and request that the SEQ ID NOs: 43, 50-51, 55-57, 5-8 all be examined in this application in accordance with the recommendation in the M.P.E.P.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 22, 2006

By: Rebecca M. McNeill
Rebecca M. McNeill
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